

**1. Definitions**

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Designastyle”** means LHH 2022 Limited T/A Designastyle, its successors and assigns or any person acting on behalf of and with the authority of LHH 2022 Limited T/A Designastyle.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Designastyle to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 **“Works”** means all Works (including consultation, design services, installation services or importation and distribution of ceramic tiles) or Materials (including ceramic tiles) supplied by Designastyle to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.5 **“Worksite”** means the address nominated by the Client to which the Materials are to be supplied by Designastyle.
- 1.6 **“Intended Use”** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.
- 1.7 **“Non-Conforming Building Product”** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
  - (b) does not, or will not, comply with the relevant regulatory provisions; or
  - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using Designastyle’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.10 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) in New Zealand Dollars for the Works or Materials as agreed between Designastyle and the Client in accordance with clause 7 below.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with Designastyle and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, Designastyle reserves the right to refuse delivery.
- 2.6 Where Designastyle gives any advice, recommendation, information, assistance or service provided by Designastyle in relation to Works supplied is given in good faith to the Client or the Client’s agent and is based on Designastyle’s own knowledge and experience and shall be accepted without liability on the part of Designastyle. Where such advice or recommendations is not acted upon then Designastyle shall require the Client or their agent to authorise commencement of the Works in writing. Designastyle shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Out of Stock/Substitution and Indent Orders**

- 3.1 Designastyle will use its reasonable endeavours to ensure that all Materials ordered by the Client are supplied to the Client (including, but not limited to, indent orders, which may take between eight (8) to fourteen (14) weeks to be received from Designastyle’s supplier). If the Materials ordered are not available or delayed due to the size, nature and availability of the order, Designastyle shall work with the Client on a case by case basis where options may include back order of Materials or amendment to the order.
- 3.2 Notwithstanding clause 7.2(b), Designastyle shall inform the Client of any subsequent delays (including, but not limited to, a new production at the factory, industrial action or strikes with truck transportation or on wharves, summer holiday disruption in Europe (usually August), Christmas peak shipping loads, etc.) on orders from Designastyle’s suppliers.
- 3.3 In accordance with clause 8, Designastyle will not be liable for any loss incurred by the Client as a result of any delays from Designastyle’s suppliers or carriers that are beyond Designastyle’s knowledge or control.

- 3.4 Notwithstanding clause 22, the Client may cancel the order at any time prior to the commencement of the voyage to New Zealand. The voyage is deemed to commence at the time the container is loaded at the factory with the Materials and the deposit payable in accordance with clause 7.4 may apply.
- 3.5 At Designastyle's sole discretion and notwithstanding clause 7.5, the Client shall pay the balance of the Client's indent order prior to collection or seven (7) days after the indent order arrives.
- 3.6 The Client may only place an indent order for the minimum quantities that may be shipped by Designastyle's supplier. Pieces are not supplied individually. Orders must be placed to the nearest whole box and orders less than a full pallet may be shown as a variance in accordance with clause 7.2. 600X600 mm tiles supplied have a minimum quantity order of 4.32 m<sup>2</sup>.
- 3.7 Subject to clause 17.1, non-stocklist items or Materials made to the Client's specifications or indented orders are under no circumstances acceptable for credit or return.

#### **4. Authorised Representatives**

- 4.1 The Client acknowledges that Designastyle shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to Designastyle, that person shall have the full authority of the Client to order any Works, Materials and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to Designastyle for all additional costs incurred by Designastyle (including Designastyle's profit margin) in providing any Works, Materials or variation/s requested thereto by the Client's duly authorised representative.

#### **5. Errors and Omissions**

- 5.1 The Client acknowledges and accepts that Designastyle shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Designastyle in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Designastyle in respect of the Works.
- 5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of Designastyle; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

#### **6. Change in Control**

- 6.1 The Client shall give Designastyle not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Designastyle as a result of the Client's failure to comply with this clause.

#### **7. Price and Payment**

- 7.1 At Designastyle's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Designastyle to the Client in respect of Works performed or Materials supplied; or
  - (b) Designastyle's Price at the date of delivery of the Works according to Designastyle's current pricelist; or
  - (c) Designastyle's quoted Price (subject to clause 7.2) which shall be binding upon Designastyle provided that the Client shall accept Designastyle's quotation in writing within sixty (60) days.
- 7.2 Designastyle reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
  - (b) if a variation to Designastyle's quotation is requested or required (including as to the nature or quantity of the Materials, nature and location of the collection and/or delivery address, distance from the collection address to the delivery address, facilities available for loading or unloading, weather conditions or delays beyond the control of Designastyle, delivery times or dates, or otherwise, etc.); or
  - (c) if during the course of the Works, the Materials cease to be available from Designastyle's third party suppliers, then Designastyle reserves the right to provide alternative Materials, subject to prior confirmation and agreement of both parties; or
  - (d) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (e) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, change in design, surface conditions, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
  - (f) in the event of increases to Designastyle in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Designastyle's control.
- 7.3 Variations will be charged for on the basis of Designastyle's quotation, and will be detailed in writing, and shown as variations on Designastyle's invoice. The Client shall be required to respond to any variation submitted by Designastyle within ten (10) working days. Failure to do so will entitle Designastyle to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.4 At Designastyle's sole discretion a deposit may be required (including, but not limited to tiles purchased where Designastyle is required to pay the full value of the product prior to it being shipped to New Zealand), the following conditions apply:
- (a) fifty percent (50%) of the supply Price is payable up front and considered a non-refundable deposit; and
  - (b) the balance payable on completion of the project.
- 7.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Designastyle, which may be:
- (a) on completion of the Works; or

- (b) on or before delivery of the Materials;
  - (c) by way of progress payments in accordance with Designastyle's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed;
  - (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Designastyle.
- 7.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Designastyle.
- 7.7 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement.
- 7.8 Designastyle may in its discretion allocate any payment received from the Client towards any invoice that Designastyle determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Designastyle may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Designastyle, payment will be deemed to be allocated in such manner as preserves the maximum value of Designastyle's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 7.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Designastyle nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by Designastyle is a claim made under the Construction Contracts Act 2002.
- 7.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Designastyle an amount equal to any GST Designastyle must pay for any supply by Designastyle under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 8. Provision of the Works**
- 8.1 Subject to clause 8.2 it is Designastyle's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 8.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Designastyle claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Designastyle's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the Worksite ready for the Works; or
  - (c) notify Designastyle that the Worksite is ready.
- 8.3 Designastyle may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.4 The Client shall take delivery of the Materials tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
  - (b) the Price shall be adjusted pro rata to the discrepancy or to the value that has been delivered.
- 8.5 Designastyle allows for a wastage factor of fifteen percent (15%).
- 8.6 Any time specified by Designastyle for delivery of the Works is an estimate only and Designastyle will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Designastyle is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Designastyle shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 9. Risk**
- 9.1 If Designastyle retains ownership of the Materials under clause 14 then:
- (a) where Designastyle is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
    - (i) the Client or the Client's nominated carrier takes possession of the Materials at Designastyle's address; or
    - (ii) the Materials are delivered by Designastyle or Designastyle's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where Designastyle is to both supply and install Materials then Designastyle shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 9.2 Notwithstanding the provisions of clause 9.1 if the Client specifically requests Designastyle to leave Materials outside Designastyle's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 9.3 Designastyle is not responsible for what lies beneath the surface of the contracted work area and therefore Designastyle cannot be held responsible for the floor design, colour or general appearance that emerges after sanding and polishing Works that have been completed.
- 9.4 In the event asbestos or any other toxic substances are discovered at the Worksite, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Designastyle against any costs incurred by Designastyle as a consequence of such discovery. Under no circumstances will Designastyle handle removal of asbestos product.
- 9.5 Designastyle shall be entitled to rely on the accuracy of any plans, specifications (including, but not limited to CAD drawings) and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client

- is inaccurate, Designastyle accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.6 The Client acknowledges and accepts that all descriptive specifications, illustrations, dimensions and weights stated in Designastyle's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by Designastyle.
- 9.7 The Client acknowledges that Materials (including but not limited to paint, timber, tiles, or concrete, etc.) supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. While every effort will be taken by Designastyle to match colour, shade or grain of product, Designastyle shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied.
- 9.8 Materials supplied may:
- (i) expand, contract or distort as a result of exposure to heat, cold, weather;
  - (ii) mark or stain if exposed to certain substances; and
  - (iii) be damaged or disfigured by impact or scratching;
- 9.9 All potential waterproofing surfaces are subject to an inspection by Designastyle prior to the commencement of the Works. In the event that the surface is deemed unsuitable, then Designastyle reserves the right to halt the Works until such time as it is agreed between Designastyle and the Client as to the additional cost in further preparation of the surface in order to make it fit for waterproofing. The additional cost shall be charged as a variation to the quotation as per clause 7.2.
- 9.10 The Client acknowledges and accepts that:
- (a) Designastyle shall apply the Materials to the manufacturer's specification and in compliance with all relevant industry standards; and
  - (b) Designastyle may not be able to ascertain the depth of, or if a void or cavity is present behind a crack for repair without closer inspection. Any additional costs incurred by Designastyle for carrying out such investigation prior to repairing such a defect shall be invoiced as an extra. The Client also accepts that repair methods may alter as a result of any such investigation; and
  - (c) Designastyle gives no guarantee (expressed or implied) as to the length of time the curing process of repair Works will take due to factors or conditions outside Designastyle's control (including, but not limited to, the surfaces and the existing condition of the defect, atmospheric conditions including humidity and temperature, the nature of the repair); and
  - (d) it is their responsibility to ensure that any uncompleted areas are kept watertight during installation if there is any delay in the Works due to circumstances beyond the control of Designastyle (including, but not limited to, waiting on another trade, materials, or weather conditions). Designastyle will accept no liability whatsoever for any damages caused as a result of the Client's failure to comply with this clause.
- 9.11 If the Client orders an insufficient number of tiles, then Designastyle will take no responsibility for any variation of colour in further batches supplied to the Client or the inability to supply Materials at all.
- 9.12 If the giving of an estimate or quotation for the supply of Materials involves Designastyle estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of Designastyle estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
- 9.13 Should the Client require any changes to Designastyle estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
- 9.14 Designastyle shall not be liable for Materials damaged due to inappropriate tile selection, maintenance or carelessness, and Designastyle shall not be liable for any tiles that are already affixed.
- 9.15 Designastyle gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond Designastyle's control due to the nature of the product at the time of installation, therefore it is recommended that the Client allows for extra product for such breakages.
- 9.16 Due to the nature of the Works, dust will be created and the Client is to ensure that adequate dust control is in place during the provision of the Works.
- 9.17 Designastyle will only inspect or view a floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects.
- 9.18 Designastyle will not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating or large expanses of glass windows without curtains or blinds.
- 9.19 Whilst Designastyle will take all due care to avoid contamination of the finished surface, Designastyle accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the Worksite.
- 10. Access**
- 10.1 The Client shall ensure that Designastyle has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections and for the delivery and/or installation of the Materials). Designastyle shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Designastyle.
- 11. Underground Locations**
- 11.1 Prior to Designastyle commencing any work the Client must advise Designastyle of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Worksite.
- 11.2 Whilst Designastyle will take all care to avoid damage to any underground services the Client agrees to indemnify Designastyle in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

**12. Insurance**

- 12.1 Designastyle shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.

**13. Compliance with Laws**

- 13.1 The Client and Designastyle shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
- 13.2 Both parties acknowledge and agree:
- (a) to comply with the Building Amendment Act 2013, in respect of all workmanship and building products to be supplied during the course of the Works; and
  - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.3 Where the Client has supplied products for Designastyle to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and are for their Intended Use and any faults inherent in those products. However, if in Designastyle's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then Designastyle shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 7.2.
- 13.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.5 Designastyle shall comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Works.
- 13.6 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), Designastyle agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.

**14. Title**

- 14.1 Designastyle and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Designastyle all amounts owing to Designastyle; and
  - (b) the Client has met all of its other obligations to Designastyle.
- 14.2 Receipt by Designastyle of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Designastyle on request;
  - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Designastyle and must pay to Designastyle the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
  - (c) the production of these terms and conditions by Designastyle shall be sufficient evidence of Designastyle's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Designastyle to make further enquiries;
  - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Designastyle and must pay or deliver the proceeds to Designastyle on demand;
  - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Designastyle and must sell, dispose of or return the resulting product to Designastyle as it so directs;
  - (f) unless the Materials have become fixtures the Client irrevocably authorises Designastyle to enter any premises where Designastyle believes the Materials are kept and recover possession of the Materials;
  - (g) Designastyle may recover possession of any Materials in transit whether or not delivery has occurred;
  - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Designastyle; and
  - (i) Designastyle may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

**15. Personal Property Securities Act 1999 ("PPSA")**

- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to Designastyle for Works – that have previously been supplied and that will be supplied in the future by Designastyle to the Client.
- 15.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Designastyle may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Designastyle for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Designastyle; and

- (d) immediately advise Designastyle of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.3 Designastyle and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by Designastyle, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by Designastyle under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**16. Security and Charge**

- 16.1 In consideration of Designastyle agreeing to supply the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies Designastyle from and against all Designastyle's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Designastyle's rights under this clause.
- 16.3 The Client irrevocably appoints Designastyle and each director of Designastyle as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

**17. Defects and Returns**

- 17.1 The Client shall inspect the Materials on collection/delivery and prior to installation of the Works and shall within seven (7) days of delivery (time being of the essence) notify Designastyle of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. Batches, sizes and quantities must be checked prior to installation. The Client shall afford Designastyle an opportunity to inspect the Materials or Works within a reasonable time following delivery if the Client believes the Materials or Works are defective in any way. If the Client shall fail to comply with these provisions the Materials or Works shall be presumed to be free from any defect or damage. For defective Materials, which Designastyle has agreed in writing that the Client is entitled to reject, Designastyle's liability is limited to either (at Designastyle's discretion) replacing the Materials or repairing the Works.
- 17.2 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
  - (b) Designastyle has agreed in writing to accept the return of the Materials; and
  - (c) the Materials are returned at the Client's cost within fourteen (14) days of the delivery date; and
  - (d) Designastyle will not be liable for Materials which have not been stored or used in a proper manner; and
  - (e) the Materials are returned in the condition in which they were delivered and with all packaging material, unopened full boxes, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.3 Designastyle may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any freight.
- 17.4 Subject to clause 17.1, non-stocklist items or Materials made to the Client's specifications or indented stock are under no circumstances acceptable for credit or return.

**18. Warranties**

- 18.1 Subject to the conditions of warranty set out in clause 18.2 Designastyle warrants that if any defect in any workmanship of Designastyle becomes apparent and is reported to Designastyle within twelve (12) months of the date of delivery (time being of the essence) then Designastyle will either (at Designastyle's sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Client to properly maintain any Materials; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by Designastyle; or
    - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and Designastyle shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Designastyle's consent.
  - (c) in respect of all claims Designastyle shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 18.3 For Materials not manufactured by Designastyle, the warranty shall be the current warranty provided by the manufacturer of the Materials. Designastyle shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

**19. Consumer Guarantees Act 1993**

- 19.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by Designastyle to the Client.

**20. Intellectual Property**

- 20.1 Where Designastyle has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Designastyle, and shall only be used by the

Client at Designastyle's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Designastyle.

- 20.2 The Client warrants that all designs, specifications or instructions given to Designastyle will not cause Designastyle to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Designastyle against any action taken by a third party against Designastyle in respect of any such infringement.
- 20.3 The Client agrees that Designastyle may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Designastyle has created for the Client.

## **21. Default and Consequences of Default**

- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Designastyle's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes Designastyle any money the Client shall indemnify Designastyle from and against all costs and disbursements incurred by Designastyle in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Designastyle's collection agency costs, and bank dishonour fees).
- 21.3 If the Client does not collect their order within seven (7) days of being notified of its arrival, the Client may be liable for the costs of storage.
- 21.4 Further to any other rights or remedies Designastyle may have under this Contract, if a Client has made payment to Designastyle, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Designastyle under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 21.5 Without prejudice to Designastyle's other remedies at law Designastyle shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Designastyle shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Designastyle becomes overdue, or in Designastyle's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by Designastyle;
  - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **22. Cancellation**

- 22.1 Without prejudice to any other rights or remedies Designastyle may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then Designastyle may suspend or terminate the supply of the Works. Designastyle will not be liable to the Client for any loss or damage the Client suffers because Designastyle has exercised its rights under this clause.
- 22.2 Designastyle may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Designastyle shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Designastyle for Works already performed. Designastyle shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Designastyle as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## **23. Privacy Policy**

- 23.1 All emails, documents, images or other recorded information held or used by Designastyle is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. Designastyle acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Designastyle acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Designastyle that may result in serious harm to the Client, Designastyle will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to Designastyle in respect of Cookies where the Client utilises Designastyle's website to make enquiries. Designastyle agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to Designastyle when Designastyle sends an email to the Client, so Designastyle may collect and review that information ("collectively Personal Information")
- If the Client consents to Designastyle's use of Cookies on Designastyle's website and later wishes to withdraw that consent, the Client may manage and control Designastyle's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Client authorises Designastyle or Designastyle's agent to:
- (a) access, collect, retain and use any information about the Client;

- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by Designastyle from the Client directly or obtained by Designastyle from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.5 The Client shall have the right to request (by e-mail) from Designastyle, a copy of the Personal Information about the Client retained by Designastyle and the right to request that Designastyle correct any incorrect Personal Information.
- 23.6 Designastyle will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.7 The Client can make a privacy complaint by contacting Designastyle via e-mail. Designastyle will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

#### **24. Suspension of Works**

- 24.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:
- (a) Designastyle has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
    - (i) the payment is not paid in full by the due date for payment in accordance with clause 7.4 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Designastyle by a particular date; and
    - (iv) Designastyle has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
  - (b) if Designastyle suspends work, it:
    - (i) is not in breach of Contract; and
    - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
    - (iii) is entitled to an extension of time to complete the Contract; and
    - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
  - (c) if Designastyle exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to Designastyle under the Contract and Commercial Law Act 2017; or
    - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Designastyle suspending work under this provision;
  - (d) due to any act or omission by the Client, the Client effectively precludes Designastyle from continuing the Works or performing or complying with Designastyle's obligations under this Contract, then without prejudice to Designastyle's other rights and remedies, Designastyle may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by Designastyle as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 24.2 If pursuant to any right conferred by this Contract, Designastyle suspends the Works and the default that led to that suspension continues un-remedied subject to clause 22.1 for at least ten (10) working days, Designastyle shall be entitled to terminate the Contract, in accordance with clause 22.

#### **25. Service of Notices**

- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

#### **26. Trusts**

- 26.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Designastyle may have notice of the Trust, the Client covenants with Designastyle as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;

- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of Designastyle (Designastyle will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
  - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

**27. General**

- 27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 27.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Christchurch, New Zealand.
- 27.4 Designastyle shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Designastyle of these terms and conditions (alternatively Designastyle's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.5 Designastyle may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.6 The Client cannot licence or assign without the written approval of Designastyle.
- 27.7 Designastyle may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Designastyle's sub-contractors without the authority of Designastyle.
- 27.8 The Client agrees that Designastyle may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Designastyle to provide Works to the Client.
- 27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to any government imposed border lockdowns (including worldwide destination ports) etc, Force Majeure or other event beyond the reasonable control of either party.
- 27.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.